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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: STATES OF EMERGENCY

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

National Security Laws in Asia

1. "National security" is one of the most controversial concepts in current political and human rights discourse. On the one hand, states usually maintain that "national security" is necessary for the survival of their society and people and should take precedence over all other interests. On the other hand, human rights defenders hold that individual rights and liberties should never be compromised, whether in the interests of "national security" or otherwise.

2. The concept of "national security" emerged during the Cold War, its main proponent being the United States, which used it as the foremost weapon to fend off communist influence. The United States promoted the worldwide spread of "national security ideology", backing "anticommunist" authoritarian dictatorships and rulers in many countries.

3. In the aftermath of the Cold War the national security model was expanded to create conditions for economic globalization, again spearheaded by the United States. In Asia, economic development was subsumed within the national security ideology of most governments. These regimes have increasingly adopted repressive measures argued necessary to ensure economic growth, but in fact designed to silence dissent and political opposition.

4. National security ideology is directly linked to militarization. Since the late 1960s Asian states have become increasingly militarized. Under the pretext of national security, most Asian governments have armed themselves and waged war against their own citizens. The more militarized the state, the more pronounced becomes its security orientation. In the 1960s and 1970s, the drastic consequences of this development were evident in widespread martial law, authoritarian dictatorships, repression and anticommunist purges. In states like Korea, Indonesia and Myanmar, state-induced violence continues to be the norm.

States of Emergency, under which most national security laws are enacted, are allowed for under article 4 of the International Covenant on Civil and Political Rights (ICCPR). However, there are clear and unequivocal limitations to the powers of government to deviate from the principles of the ICCPR:

- In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed;

- To the extent strictly required by the exigencies of the situation;

- Provided that such measures are not inconsistent with their other obligations under international law;

- Do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin; and,

- Do not breach provisions in articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18, including the rights to life, freedom from torture, inhuman or degrading treatment or punishment, freedom from slavery, slave trade and servitude and freedom of thought, conscience and religion.

5. In Asia, "national security" has been incorporated within national legal frameworks. Although known by different names, "emergency" acts have deliberately incorporated a common flaw: vital concepts such as "terrorism", "subversion" "state/public security" have

not been clearly defined to describe the precise nature of the perceived threat. It is this ambiguity that has given governments wide scope in exercising such legislation, whether or not within an emergency situation, and thereby protect themselves from public scrutiny and criticism. In this militarized scenario, popular dissent is stifled and condemned as "subversion". The "enemy" is among and within the population and consequently the people themselves are perceived to be a threat.

6. National security laws in Asia share the following characteristics:

- Widespread powers of arrest, interrogation, intimidation and detention without purview of judicial procedures;

- Stringent provisions for restriction of movement, both individual and collective, such as curfews, house arrest and internal exile;

- Severe penalties, including the death penalty for vaguely defined "terrorist" offenses and other politically-motivated acts;

- Provisions for special courts with procedures lacking the traditional safeguards available to a defendant under ordinary criminal law; and,

- Indemnification of state security force members against legal action for exercise of powers under these laws.

7. To illustrate, the Asian Legal Resource Centre draws the Commission's attention to the current situation in Singapore and Malaysia. In 1960 these two countries re-enacted the Internal Security Act (ISA) that both had inherited from the British colonial regime. The ISA in both countries is virtually identical. Section 73(1)/74 stipulates that

> any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe (a) that there are grounds which would justify his detention under section 8; and (b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia/Singapore or any part thereof or to maintenance of essential services therein or to the economic life thereof.

Under Section 8,

> if the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia/Singapore or any part thereof or to the maintenance of essential services therein or the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that that person be detained for any period not exceeding two years.

8. In Singapore, since Mr Lee Kuan Yew and his People's Action Party (PAP) came to power in 1959, the ISA has been used primarily to stifle political opposition and critics. According to an ex-political prisoner, this ISA represents "state terror in its raw form; the terror comes from the constant threat of indefinite detention and the immediate threat of torture, mistreatment, torture, and public humiliation". The most well-known cases of ISA implementation in Singapore have been:

- Operation Cold Store, 2 February 1963, when the joint Security Council of Singapore, Malaya and Britain detained without trial all leaders of the opposition parties and and labour

movement in the two countries, some for as long as 17 years.

- Chia Thye Poh, who in 1961, was one of three members of parliament who formed the Barisan Socialis political party. In October 1966, Chia was one of 10 Barisan members who walked out of parliament to fight the PAP on the streets. Three weeks later, Chia was arrested. He spent the next 23 years in detention. In that period, PAP did not produce any evidence or charge Chia for any offence.

- T T Rajah, who in 1974 was arrested and detained for 18 months. In 1971 he had acted for some ISA detainees and had taken out summonses against individual officers who had allegedly beaten his clients.

- G Raman, a lawyer for political prisoners, who in 1977 was himself arrested together with several others for a "communist conspiracy".

- A university lecturer and 8 University of Singapore Chinese Society members arrested in 1979 for pro-Communist party of Malaya activities.

- A total of 22 persons arrested and detained on 21 May and 20 June 1987 for being part of a "Marxist conspiracy to overthrow the government by violent means".

- Francis Seow, former Solicitor General and Law Society President, who in May 1988 was arrested and detained while taking a statement from a client detainee from the 1987 arrests. Earlier he had incurred the wrath of the government by his criticism of the Newspaper and Printing Presses Bill.

9. Over the last 20 years political power in Malaysia has become increasingly concentrated in the hands of Prime Minister Dr Mahathir Mohamad. The judiciary, media and police have become no more than tools to be manipulated by this leader to perpetrate his rule. Mahathir's government has long been criticised both locally and overseas for its use and abuse of the ISA. Since April 2001, the government has used the ISA to arrest and detain without trial nearly thirty reformist and political activists from opposition political parties and non-government organisations. These have included youth leaders of the National Justice Party (keADILan) and activists from the Islamic Party (PAS), all accused of being involved in illegal activities to topple the government by violent means. Ironically, Mahathir recently used the current United States-led "anti-terrorist" campaign to justify his own continued use of the ISA against his political opponents. Whereas in the past thousands of people were detained under Malaysia's ISA on the grounds of being procommunist, now hundreds may be detained without trial on allegations of being involved in militant Islamic movements.

10. In conclusion, the misuse of national security laws in Asia is pervasive and explicit. The Asian Legal Resource Centre urges the Commission to investigate and pursue those Asian states deemed in violation of article 4 of the ICCPR through their manipulation of such instruments to oppressive political ends.